

BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE
VARIANCE PERMIT DENIED BY
SPOKANE COUNTY TO HOWARD AND
MARY DOLPHIN,

HOWARD and MARY DOLPHIN,

Appellants,

v.

SPOKANE COUNTY and STATE OF
WASHINGTON, DEPARTMENT OF ECOLOGY,

Respondents.

SHB No. 87-37

FINAL FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER

This matter is the Request for Review of the denial of a variance permit relating to a shoreline setback.

The matter came on before the Shorelines Hearings Board, Wick Dufford, Chairman, Nancy Burnett, Thomas R. Cowan and Ronald T. Bailey, Members.

William A. Harrison, Administrative Appeals Judge presided.

The hearing was conducted at Spokane on May 6, 1988.

1 Appellants appeared by Howard H. Herman, Attorney at Law.
2 Respondent Spokane County appeared by James P. Emacio, Deputy
3 Prosecuting Attorney. Respondent Department of Ecology did not
4 appear, but filed a hearing brief. Court Reporter Virginia N.
5 Recanzone, recorded the proceedings.

6 Witnesses were sworn and testified. Exhibits were examined. The
7 Board and Administrative Appeals Judge viewed the site of the proposed
8 development in the company of the parties. From testimony heard and
9 exhibits examined, the Shorelines Hearings Board makes these

10 FINDINGS OF FACT

11 I

12 This matter arises on Liberty Lake in Spokane County.

13 II

14 The site in question is Sandy Beach resort. The site has been
15 owned and operated by Mr. and Mrs. Dolphin and other family members
16 since 1961. The resort provides recreational opportunities such as
17 swimming, rental cabins and picnic areas.

18 III

19 In 1972, the upland portion of the acreage comprising the resort
20 was developed as mobile home park tracts. At present, 33 tracts exist
21 with mobile homes on each. The tracts are rented by each mobile home
22 resident.

23 IV

24 In 1974 Spokane County adopted the Spokane County Shoreline Master

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1 Program (SCSMP) which provides:

2 "No structure shall be erected within 50 feet of
3 the ordinary high water mark, except for bridge
4 approaches and bridges, marinas, piers or docks, or
5 buildings related to recreation developments or proven
to be otherwise necessary in the public interest and
authorized by and consistent with this program."

6 SCSMP, Section V, Paragraph 5.10, page 4-8.

7 V

8 In 1977, the Liberty Lake Sewer District sought an easement from
9 the Dolphins to locate a sanitary sewer parallel to the beach across
10 the site. The location of the sewer line was prescribed by the sewer
11 district. That location required an easement whose waterward edge was
12 approximately 75 feet from the ordinary high water mark. In a
cooperative spirit, the Dolphins granted the requested easement in
14 return for the right to hook up to the sewer. However, it is likely
15 that refusal to so cooperate would have led to condemnation by the
16 sewer district and placement of the sewer at the same location.

17 VI

18 In late 1986, Mr. and Mrs. Dolphin sought County approval to
19 convert the remainder of their recreational resort into a mobile home
20 park with tracts available for rent. They sought a shoreline
21 substantial development permit and variance permit for the addition of
22 34 sites to the 33 already existing. The request for variance was
23

necessitated by 5 proposed trailer sites to be located waterward of the sewer line easement and to a point only 25 feet from the ordinary high water mark, rather than 50 feet as required by the SCSMP. See Finding of Fact IV, above.

VII

Spokane County granted the shoreline substantial development permit for the 29 sites landward of the sewer line, but denied the variance for the 5 sites which encroached upon the setback. On August 21, 1987, appellants, Mr. and Mrs. Dolphin, filed their request for review before this Board.

VIII

The sewer easement coincides with an existing private road within the site. It is not permissible to place permanent buildings over the sewer easement. It is not feasible from an engineering standpoint to move the sewer line.

IX

In 1987, Spokane County granted a variance to Raymond A. Hanson to build within the 50 foot set back on Liberty Lake. The lot in question was bounded on the upland by a public road and was approximately one acre in size.

X

Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such. From these Findings of Fact, the Board makes these

CONCLUSIONS OF LAW

I

The applicable criteria for the variance at issue is that adopted by the State Department of Ecology at WAC 173-14-150. This states, in pertinent part:

WAC 173-14-150 Review criteria for variance permits. The purpose of a variance permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in the applicable master program where there are extraordinary or unique circumstances relating to the property such that the strict implementation of the master program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.

(1) Variance permits should be granted in a circumstance where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.

(2) Variance permits for development that will be located landward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030(2)(b), except within those areas designated by the department as marshes, bogs, or swamps pursuant to chapter 173-22 WAC, may be authorized provided the applicant can demonstrate all of the following:

(a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes or significantly interferes with a reasonable use of the property not otherwise prohibited by the master program;

(b) That the hardship described in WAC 173-14-150(2)(a) above is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;

(c) That the design of the project is compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment;

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(5)

1 (d) That the requested variance does not constitute
2 a grant of special privilege not enjoyed by the other
3 properties in the areas, and is the minimum necessary to
4 afford relief; and

5 (e) That the public interest will suffer no
6 substantial detrimental effect.

7 (3) . . .

8 (4) In the granting of all variance permits,
9 consideration shall be given to the cumulative impact of
10 additional requests for like actions in the area. For
11 example if variances were granted to other developments
12 in the area where similar circumstances exist the total
13 of the variances shall also remain consistent with the
14 policies of RCW 90.58.020 and shall not produce
15 substantial adverse effects to the shoreline environment.

16 II

17 WAC 173-14-150(2)(a)

18 Preclusion or Interference with a Reasonable Use.

19 The strict application of the 50 foot setback does not preclude or
20 significantly interfere with a reasonable use of the property. This
21 is the acid test which appellants fail to meet with their proposal.
22 While use of the site as a mobile home park does constitute a
23 reasonable use, any setback imposed by law will allow fewer mobile
24 homes upon the site than would be so if there were no setback. This
25 is not the hardship contemplated by WAC 173-14-150(a). The 33
26 existing sites augmented by the 29 new sites approved by the County
27 constitute a reasonable use, while elimination of the proposed 5 sites
within the setback does not preclude or significantly interfere with
that reasonable use. The proposed variance is not consistent with WAC
173-14-150(2)(a).

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III

WAC 173-14-150(2)(b)

Hardship the result of Unique Conditions.

The contention of appellants under this heading is that a sewer line was imposed upon them. We are not unsympathetic to that view. However, the greater issue is whether the sewer line resulted in any hardship necessitating encroachment into the setback. We hold that it did not. As noted on Conclusion of Law I, a reasonable use of the site exists without setback encroachment. The proposed variance is not consistent with WAC 173-14-150(2)(b).

IV

WAC 173-14-150(2)(c)

Design Compatible with Other Activities.

The design of the project, if built within the setback is compatible with other permitted activities in the area, and will not cause adverse effects to adjacent properties many of which were built upon prior to advent of the 50 foot setback of the SCSMP. The proposed variance is consistent with WAC 173-14-150(2)(c).

V

WAC 173-14-150(2)(D)

Special Privilege.

The requested variance would constitute a grant of special privilege not enjoyed by other properties in the area. The contention of appellants in this regard is that the County allowed a variance to

1 intrude upon the setback in the case of Mr. Hanson. The immediate
2 distinction between this case and that one concerns the smaller size
3 of the Hanson lot, giving use to the possibility that residential use
4 might require a variance there. There is ample residential use of
5 appellant's property without intruding into the setback. The proposed
6 variance is not consistent with WAC 173-14-150(2)(D).

7 VI

8 WAC 173-14-150(2)(E)

9 Public Interest.

10 The public interest would suffer a substantial detrimental effect
11 if, as here, setback intrusion were allowed without antecedent
12 hardship. The proposed variance is not consistent with WAC
13 173-14-150(2)(E).

14 VII

15 WAC 173-14-150(4)

16 Cumulative Impact.

17 Were variances granted to other developments on the same basis as
18 sought here, the total of variances would not remain consistent with
19 the policies of RCW 90.58.020.

20 That statutory section favors coordinated planning as manifested
21 by the setback provision at issue. The cumulative impact of variances
22 such as the one sought here, would soon overcome the setback provision.
23 The proposed variance is not consistent with WAC 173-14-150(4).

24
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VIII

Variances may be authorized when the applicant can demonstrate consistency with all of the subparts of WAC 173-14-150(2) and consistency with WAC 173-14-150(4). Appellants proposed variance is inconsistent with WAC 173-14-150(2)(a), (b), (d), and (e) and is also inconsistent with WAC 173-14-150(4). The denial of this variance proposal by Spokane County should be affirmed.

IX

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. From these Conclusions of Law, the Board enters this

ORDER

The denial of a shoreline variance permit by Spokane County is affirmed.

DONE at Lacey, Washington, this 2nd day of August, 1988.

SHORELINES HEARINGS BOARD

Wick Dufford
WICK DUFFORD, Chairman

Nancy Burnett
NANCY BURNETT, Member

Thomas R. Cowan
THOMAS R. COWAN, Member

Ronald T. Bailey
RONALD T. BAILEY, Member

William A. Harrison
WILLIAM A. HARRISON
Administrative Appeals Judge

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